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82D CONGRESS }
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SENATE

{ REPORT
No. 682

LOUIS BERNARD LAPIDES

AUGUST 20 (legislative day, AUGUST 1), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 669]

The Committee on the Judiciary, to which was referred the bill (S. 669) for the relief of Louis Bernard Lapidès, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENT

Strike all after the enacting clause and insert in lieu thereof the following:

That for the purposes of the immigration and naturalization laws, Louis Bernard Lapidès shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee and head tax. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of permanent residence in the United States to Louis Bernard Lapidès. The bill provides for an appropriate quota deduction and for the payment of the required visa fee and head tax.

STATEMENT OF FACTS

The beneficiary of the bill was born in Austria in 1899. He came to the United States in 1922 and was naturalized in 1928. He went to Palestine in 1934 where he remained until 1947. Under the pro-

visions of sections 404 and 409 of the Nationality Act of 1940 the beneficiary of the bill was required to return to the United States by October 14, 1946, in order to avoid expatriation. He failed to return before that date and thereby lost his citizenship. He was excluded as an alien upon arrival in New York on July 3, 1947. The beneficiary has exhausted his legal remedies and it has been judicially determined that he has lost his United States citizenship. He resides in New York with his son who is a citizen of the United States. His wife, who was naturalized as a United States citizen in 1932, resides in Palestine.

A letter dated July 20, 1950, to the chairman of the Senate Committee on the Judiciary from the Deputy Attorney General with reference to S. 2238, which was a bill introduced in the Eighty-first Congress for the relief of the same individual, reads as follows:

JULY 20, 1950.

HON. PAT MCCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 2238) for the relief of Louis Bernard Lapides, an alien.

The bill would direct the Secretary of State to cause an immigration visa to be issued to Louis Bernard Lapides, permitting his immediate entry into the United States for permanent residence. It would also direct him to instruct the quota-control officer to deduct one number from the nonpreference category of the appropriate immigration quota.

The files of the Immigration and Naturalization Service of this Department disclose that Louis Bernard Lapides, who claims to be a citizen of the United States, is a native of Rumania, having been born in Czernowicz, Austria, which is now in Rumania, on June 13, 1899. Coming from Palestine, he last entered the United States at the port of New York by plane on July 3, 1947. After a hearing, it was ruled by a board of special inquiry that the alien had expatriated himself under section 404 (e) of the Nationality Act of 1940, and that he was excluded from admission to the United States on the ground that he was an immigrant not in possession of an unexpired immigration visa. The excluding decision was affirmed by the Board of Immigration Appeals on July 23, 1947.

The files further reflect that the alien first entered this country about 1922, when he was admitted for permanent residence. He was naturalized as a citizen of the United States on June 27, 1928. In March 1934, he left with his family for Palestine, where he resided continuously until his return to this country in 1947. To prevent the loss of his American nationality, the alien should have returned to the United States on or before October 14, 1946, in accordance with sections 404 and 409 of the Nationality Act of 1940. Mr. Lapides admitted at the Board hearing that he knew he was required to return on or before that date, and furthermore, that he would have to return with his family, as proof that he was returning permanently. He also testified that he could not return with his family at that time because it was necessary for him to liquidate his business in Palestine and collect funds due him. He stated that he believed, however, that he had a right to enter the United States until July 1947 because of a stamped endorsement by the American Consul in Palestine, dated July 6, 1946, on an affidavit executed by him, which read in part, "Visa valid for presentation at United States ports at any time during twelve months from date."

On October 8, 1947, the alien's petition for a writ of habeas corpus was dismissed in the United States District Court for the Southern District of New York. The court held that the consul's endorsement on the affidavit did not have the authority to alter, amend or limit the effect of legislation enacted by Congress, which provided that nationality shall not be lost under the provisions of section 804 until the expiration of 6 years following October 14, 1940. The decision dismissing the writ was unanimously affirmed by the Circuit Court of Appeals, Second Circuit. On March 17, 1948, the alien filed an action for declaratory judgment under section 503 of the Nationality Act of 1940 in the United States District Court for the District of Columbia against the Attorney General and the Commissioner of the Immigration and Naturalization Service, claiming that section 404 of the

Nationality Act of 1940, as amended, was unconstitutional. The action was dismissed by the Court and the alien's motion for summary judgment was denied. On May 23, 1949, the United States Court of Appeals for the District of Columbia affirmed the decision of the District Court. The United States Supreme Court denied the alien's petition for a writ of certiorari, as well as his petition for a rehearing.

According to the alien, he went to Palestine in 1934 in order to display some American goods at an exhibition there, and it was not his intention to remain abroad permanently. His wife and children had preceded him in order to visit his wife's parents who were residing in Palestine. Mr. Lapides stated that the exhibition lasted 6 months, after which time he did not return to the United States, since he had established a timber business in Palestine. He also stated that when he left the United States he gave up all his business connections, as well as his home. He claimed that in 1938, he sold the timber business which he had established in Palestine with his father-in-law, and purchased tickets for himself, his wife, and one child, for return to the United States, but failed to return at that time because he had not completed liquidating his business. In the meantime, he stated, the war broke out in September 1939, and there was no opportunity to travel to the United States until 1945. He testified that he engaged in the stationery business in Haifa, Palestine, from 1939 until 1945, and that when he had an opportunity to return in 1945, he was unable to accept the offer because of his inability to sell his business. He presented a registration certificate indicating that he had registered under the selective service laws of the United States on December 27, 1943. He stated that he had one son in Palestine, who was born in Rumania on May 11, 1931, and who registered at the American consulate at Bucharest and subsequently with the American consul at Jerusalem. He further stated that his wife was naturalized as a United States citizen in New Jersey in 1932.

The alien was released under bond of \$2,000 on December 10, 1947. He resides in New York with his son, who arrived in New York on December 30, 1948, and was admitted as a United States citizen. In May 1948, Mr. Lapides was employed as manager of the Hotel Riverside Plaza grill room. From May 1948 until April 1949, he was self-employed as a lingerie and pajama salesman. In April 1949, he purchased a luncheonette in partnership with Mr. Bruno Russ. The alien stated that his half-interest is valued at \$6,000, that he draws about \$70 a week from this business, and that he sends his wife \$25 a week. Individuals interviewed spoke favorably of him.

The quota of Rumania, to which the alien is chargeable, is oversubscribed for many years, and an immigration visa is not readily obtainable. The alien's son, who is a United States citizen under section 1993, Revised Statutes, will reach his majority on May 11, 1952, after which time he may petition for the issuance of an immigration visa to his father under the preference provisions of section 6 (a) (1) (A) of the Immigration Act of 1924. The record fails, however, to present considerations sufficient to justify the enactment of special legislation granting the alien a preference over other persons who have been expatriated and who desire to reenter the United States for permanent residence. It would appear that the problem of granting relief to individuals who have been expatriated because of residence abroad for over 5 years and failure to return to this country prior to October 14, 1946, is a general one and should be resolved, if at all, by general legislation.

Accordingly, this Department is unable to recommend enactment of the measure.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

The bill has been amended to conform with established precedents of the Senate.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 669), as amended, should be enacted.

